

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

**PROVIDENCE HEALTH & SERVICES –
WASHINGTON D/B/A
PROVIDENCE CENTRALIA HOSPITAL¹**

Employer

and

Case 19-RC-272189

**UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL 21, AFFILIATED WITH UNITED FOOD
AND COMMERCIAL WORKERS
INTERNATIONAL UNION, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Providence Health & Services – Washington d/b/a Providence Centralia Hospital (Employer), provides health care services in the State of Washington, including operating oncology clinics in the Radiant Care department in Aberdeen, Centralia, and Lacey, Washington. On February 3, 2021, United Food and Commercial Workers, Local 21, affiliated with United Food and Commercial Workers International Union, AFL-CIO (Petitioner) filed the instant Petition seeking to represent approximately 21 employees employed in the Employer's Radiant Care department in Aberdeen, Centralia, and Lacey, Washington.

The appropriateness of the voting groups at issue in the instant *Sonotone* election is not in dispute. The only issue in this case is the method of election. The Employer and Petitioner agreed to a Stipulated Record, in which the parties agreed to submit for my consideration written positions as to the method of election in this matter. The parties timely filed their written positions, in which Petitioner seeks a mail election and the Employer seeks a manual election or, alternatively, a mixed mail-manual election.

The Board has delegated its authority in this proceeding to me under § 3(b) of the Act. Applying the Board's recent *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), decision to the circumstances in the instant case, I am directing a mail-ballot election.

I. METHOD OF ELECTION

The Employer provides health care services in Washington, including oncology clinics, referred to as the Radiant Care Department, in Aberdeen, Centralia, and Lacey, Washington. The Aberdeen facility is located in Grays Harbor County, the Centralia facility is located in Lewis

¹ All names appear as amended in the Stipulated Record.

County, and the Lacey facility is located in Thurston County. I take administrative notice of the fact that there is a distance of about 56 miles between the Aberdeen and Centralia facilities, 54 miles between the Aberdeen and Lacey facilities, and 28 miles between the Centralia and Lacey facilities.

Although not explicit in the stipulated record or written statements, it appears likely that the petitioned-for employees have been reporting to work in person throughout the COVID-19 pandemic given that they work in health care providing oncology treatment.

The COVID-19 pandemic has had a profound impact on daily life in the United States since around March 2020. Because of the risk of infection associated with gatherings and in-person activities, the pandemic has also impacted on the way the Board conducts its elections. The Centers for Disease Control and Prevention (CDC) notes that COVID-19 is “spread mainly through close contact from person to person,” and can be spread through respiratory droplets by individuals within 6 feet or through airborne transmission to individuals “who are further than 6 feet away from the person who is infected or after that person has left the space.”² According to the CDC, the most important ways to slow the spread of COVID-19 are wearing a mask, staying at least 6 feet away from others, and avoiding crowds, as “the more people you are in contact with, the more likely you are to be exposed to COVID-19.”³

Although it has not directly addressed Board elections, the CDC has issued guidance on elections and voting. Specifically, the CDC underscores that “the more an individual interacts with others, and the longer that interaction, the higher the risk of COVID-19 spread.”⁴ The CDC recommends a number of ways to reduce the risk of COVID-19 with elections, including that “where available ... offer alternative voting methods that minimize direct contact and reduce crowd size,” such as “alternatives to in-person voting.”⁵

Congress has entrusted the Board with a wide degree of discretion in establishing the procedures and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Elec.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail-ballot election where appropriate. *San Diego Gas & Elec.*, 325 NLRB at 1144-45. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines*, 120 NLRB at 1346.

² CDC, *Ways COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last viewed February 26, 2021).

³ CDC, *Protect Yourself*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last viewed February 26, 2021).

⁴ CDC, *Elections and Voting*, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last viewed February 26, 2021).

⁵ *Id.*

The Board's longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2.⁶ However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* This includes a few specific situations addressed by the Board, including where voters are "scattered" over a wide geographic area, "scattered" in time due to employee schedules, in strike situations, or other unspecified extraordinary circumstances. *San Diego Gas*, supra at 1145.

After a brief pause in elections early in the pandemic, the Board resumed conducting elections in April 2020, with many Regional Directors, including this Region's, directing primarily mail ballot elections in light of the extraordinary circumstances presented by the COVID-19 pandemic. To assist Regional Directors in determining when a manual election could be conducted safely, on July 6 the General Counsel issued a memorandum titled "Suggested Manual Election Protocols," *Memorandum GC 20-10*, setting forth detailed suggested manual election protocols.

In *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), the Board addressed how Regional Directors should assess the risks associated with the COVID-19 pandemic when considering the appropriate method of election. In doing so, the Board reaffirmed its long-standing policy favoring manual elections and outlined six situations that suggest the propriety of mail ballots due to the COVID-19 pandemic. Specifically, when one or more of the following situations is present, a Regional Director should consider directing a mail-ballot election:

1. The Agency office tasked with conducting the election is operating under "mandatory telework" status;
2. Either the 14-day trend in number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
4. The employer fails or refuses to commit to abide by *GC Memo 20-10*, "Suggested Manual Election Protocols;"
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; or
6. Other similarly compelling circumstances.

⁶ I note that the provisions of the *Casehandling Manual* are not binding procedural rules: it is issued by the General Counsel of the National Labor Relations Board (General Counsel) and not the Board and is intended to provide guidance to regional personnel in the handling of representations cases. See *Patient Care*, 360 NLRB 637, 638 (2014), citing *Solvent Services*, 313 NLRB 645, 646 (1994).

After careful examination of the record, the parties' respective positions, and the current state of the COVID-19 pandemic in Grays Harbor County, Lewis County, and Thurston County, where the facilities at issue are located, I have determined that a mail-ballot election is appropriate. I have made this determination because COVID-19 remains widespread in two of the three counties at issue and because the COVID-19 variants currently spreading in the United States, including in Washington State, constitute a compelling circumstance. In reaching this decision, I have applied the six considerations set forth in *Aspirus Keweenaw*, *supra*, to the facts of this case.

Applying these factors, I first note that the Regional office in Seattle, Washington, is not currently in mandatory telework status. I have addressed the second factor below as it is determinative in this case. Regarding the third factor, I find no state, county or local measure regarding maximum gathering size would be implicated by a manual election.⁷ Fourth, I find the Employer's commitments regarding precautions for a manual election are generally consistent with *GC Memo 20-10*. Fifth, there is no evidence that a COVID-19 outbreak is ongoing at any of the Employer's facilities at issue. Regarding the sixth factor, I address the compelling circumstances of the COVID-19 variants below. Based on the above, I conclude the method of election here is a question of the extent of COVID-19 in the community and the evolving nature of the COVID-19 pandemic.

In addressing the second consideration – whether the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher – the Board directs Regional Directors to utilize the data published by Johns Hopkins University, or from official state or local government sources. Where county level data are not available, Regional Directors should look to state level data.

Here, regarding the first part of the second consideration, I utilize the John Hopkins University COVID-19 Status Report for each county where one of the facilities is located to examine the 14-day trend in the number of new cases. The most recent information as to 14-day trends as of February 26, 2021, are as follows:

- **Grays Harbor County** (Aberdeen facility) – The Status Report showed 33 cases one day earlier, 10 cases four days earlier and 21 cases 14 days earlier. I note that there was significant fluctuation in the middle, including a drop to zero reported cases over the weekends.⁸
- **Lewis County** (Centralia facility) – The Status Report showed 24 cases one day earlier, 10 cases four days earlier and 26 cases 14 days prior. I note that there was

⁷ Beginning on Monday, January 11, 2021, all counties in Washington are subject to the public-health measures in the state's "Health Washington" plan. See *Washington State Coronavirus Response (COVID-19)*, <https://coronavirus.wa.gov/what-you-need-know/safe-start/whats-open> (last visited February 26, 2021). All of Washington State is currently in Phase 2 of that plan, in which indoor *social* gatherings are restricted to a maximum of 5 people from outside of a household; however that restriction is not applicable here. *Id.*

⁸ *COVID-19 Status Report*, <https://bao.arcgis.com/covid-19/jhu/county/53027.html> (last visited February 26, 2021).

significant fluctuation in the middle, including a drop to zero reported cases over the weekends.⁹

- **Thurston County** (Lacey facility) – The Status Report showed 30 cases one day earlier, 22 cases four days earlier, 134 cases 10 days earlier and 17 cases 14 days prior. I note that there was significant fluctuation in the middle, including a drop to zero reported cases over the weekends.¹⁰

The number of cases in Grays Harbor County is increasing, while the number of Cases in Lewis and Thurston Counties is decreasing. Additionally, all counties show significant fluctuation. Taken together, I find that the trend data supports conducting a mail ballot in Grays Harbor County.

Regarding the second part of the second consideration, none of the counties at issue appear to publish a 14-day testing positivity rate. However, the Washington State Department of Health publishes an online COVID-19 Data Dashboard including testing by county, which shows the percentage of positive cases per day as well as the 7-day rolling positivity rate.¹¹ The most recent two-week periods as of February 26, 2021, are as follows¹²:

- **Grays Harbor County** (Aberdeen facility) – There was a 5.3 percent 7-day rolling-average positivity rate as of February 24 and 5.6 percent rate as of February 17, based on incomplete data. However, the most recent periods with complete data showed a 5.4 percent 7-day positivity rate as of February 5 and 7.1 percent rate as of January 29.
- **Lewis County** (Centralia facility) – There was a 6.5 percent 7-day rolling-average positivity rate as of February 24 and 10 percent rate as of February 17, with incomplete data. However, the most recent periods with complete data showed a 11.2 percent 7-day positivity rate as of February 5 and 11.6 percent rate as of January 30.
- **Thurston County** (Lacey facility) – There was a 3.1 percent 7-day rolling-average positivity rate as of February 24 and 3.7 percent as of February 17, using incomplete data. However, the most recent periods with complete data showed a 4.3 percent 7-day positivity rate as of February 4 and 5.6 percent rate as of January 28.¹³

When taken together to establish a 14-day overview, the positivity rate in Grays Harbor County and Lewis County is above the 5 percent threshold established in *Aspirus Keweenaw* and demonstrates wide spread of COVID-19. In Thurston County, the 14-day positivity rate is slightly

⁹ COVID-19 Status Report, <https://bao.arcgis.com/covid-19/jhu/county/53041.html> (last visited February 26, 2021).

¹⁰ COVID-19 Status Report, <https://bao.arcgis.com/covid-19/jhu/county/53067.html> (last visited February 26, 2021).

¹¹ *Id.*

¹² COVID-19 In Washington State, Testing, <https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard> (last visited February 26, 2021).

¹³ I note that the Thurston County website states that as of February 25, the percent of COVID-19 positive tests over one week was 4.2 percent. See *Thurston County COVID-19 Dashboard*, <https://www.thurstoncountywa.gov/phss/Coronavirus/Pages/covid-19-dashboard.aspx> (last visited February 26, 2021).

below 5 percent when looking either at incomplete data or complete data. As of February 26, 2021, the 7-day positivity rate for Washington State is 3.39 percent.¹⁴

The Board in *Aspirus Keweenaw* stated if either factor in the second consideration was met it suggests the propriety of a mail-ballot election. Here, as the testing positivity rate in Grays Harbor County and Lewis County is above 5 percent, I find this is further support for a mail ballot election in Grays Harbor County, as well as support for a mail ballot election in Lewis County. For these locations I find a mail ballot election is appropriate based on the second consideration alone. However, because the numbers in Thurston County are such that a mixed mail-manual may still be appropriate, I have considered an additional factor in regard to that facility.

In addressing the sixth consideration – whether other compelling circumstances exist – I find it appropriate to consider recent changes in the COVID-19 pandemic, specifically the emerging variants that, according to the CDC, cause more severe disease, spread more easily between humans, require different treatments, and/or alter the effectiveness of vaccines.¹⁵ The CDC indicates that it is working to learn more about these variants and is studying them to assess how to control their spread.¹⁶ In December 2020 and January 2021, three significant variants – one from the United Kingdom, one from South Africa, and one from Brazil – were detected in the United States.¹⁷ As of the date of this decision, the United Kingdom and South Africa variants have been confirmed to be circulating in Washington State.¹⁸ I find that the uncertainty of added risks with the recently emerging variants, which were not yet in the United States at the time of the Board’s decision in *Aspirus Keweenaw*, constitute a compelling circumstance that is sufficient to conduct the election entirely by mail, instead of a mail ballot at two facilities and a manual election at the third. While a mixed mail-manual election might normally be an appropriate solution due to the disperse locations, the same could be said of a mail-ballot election due to the distances between the three facilities at issue.

Moreover, I do not find persuasive the Employer’s argument that eligible voters have had the opportunity to receive the COVID-19 vaccine, thus minimizing the risk of any spread of the virus. As a preliminary matter, this argument noticeably lacks any assurances that the eligible employees *have* received the vaccine and ignores the fact that the Board Agent conducting the election and any party representatives may not yet be eligible. Even assuming *arguendo* that the eligible voters were vaccinated, the CDC underscores that “scientists are still learning how well vaccines prevent [individuals] from spreading the virus that causes COVID-19 to others,” as

¹⁴ *Which U.S. States Meet WHO Recommended Testing Criteria*, <https://coronavirus.jhu.edu/testing/testing-positivity> (last visited February 26, 2021).

¹⁵ *US COVID-19 Cases Caused by Variants*, <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html> (last visited February 26, 2021); *About Variants of the Virus that Causes COVID-19*, <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last visited February 26, 2021).

¹⁶ *Id.*

¹⁷ *Emerging SARS-CoV-2 Variants*, <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/scientific-brief-emerging-variants.html> (last visited February 26, 2021).

¹⁸ *Washington State Department of Health, News Release, First Case of B.1.351 Variant Identified in Washington State as Cases of B.1.1.7 Increase*, <https://www.doh.wa.gov/Newsroom/Articles/ID/2639/First-case-of-B1351-variant-identified-in-Washington-State-as-cases-of-B117-increase> (last visited February 26, 2021).

vaccinated individuals may still be exposed and carry the virus even if they do not feel sick or have symptoms.¹⁹ The Employer's argument regarding vaccines also fails to recognize that the Radiant Care department where the petitioned-for employees work caters to oncology patients, who are also not necessarily eligible for the vaccine and who are at heightened risk from COVID-19 exposure. Many health care environments have no visitor policies to minimize risks to patients, and the Employer's brief is silent as to whether such a policy exists at its facilities. The Employer offered no alternatives, such as an outdoor voting location, that would minimize risk of bringing a Board Agent and party representatives, who may all be unvaccinated, into an oncology clinic with patients at heightened risk.

In the context of the COVID-19 pandemic, given that two of the three facilities at issue are located in counties where the pandemic is considered widespread by the Board's standard and the uncertain nature of the emerging variants, I utilize my discretion to order a mail-ballot election.

III. CONCLUSIONS

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²⁰
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
4. The following employees of the Employer constitute appropriate voting groups in the petitioned-for *Sonotone* election:

VOTING GROUP - UNIT A (PROFESSIONAL UNIT):

¹⁹ CDC, *Key Things to Know*, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html> (last visited February 26, 2021).

²⁰ The parties stipulated to the following facts regarding commerce:

The Employer, a Washington corporation with an office and place of business located in Centralia, Washington, is engaged in the business of providing health care services, including operating oncology clinics. In the past calendar year, a representative period, the Employer derived gross revenues in excess of \$1,000,000 and purchased and received at its facility within the State of Washington goods valued in excess of \$50,000 directly from suppliers outside the State of Washington. Accordingly, the Employer is engaged in commerce within the meaning of the Act and is subject to the jurisdiction of the Board. The Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

Included: All full-time, regular part-time, and per diem registered nurses, dosimetrists, and radiation therapists in the Radiant Care Department employed by the Employer at the following locations: 2015 Cooks Hill Road, Suite 100, Centralia, WA 98531; 1200 Basich Blvd., Aberdeen, WA 98520; and 4525 3rd Ave. SE, Lacey, WA 98503.

Excluded: All other employees, non-professional employees, managerial employees, confidential employees, and guards and supervisors as defined in the Act.

VOTING GROUP - UNIT B (NON-PROFESSIONAL UNIT):

Included: All full-time, regular part-time, and per diem licensed practical nurses, radiation therapy assistants, and patient care coordinators in the Radiant Care Department employed by the Employer at the following locations: 2015 Cooks Hill Road, Suite 100, Centralia, WA 98531; 1200 Basich Blvd., Aberdeen, WA 98520; and 4525 3rd Ave. SE, Lacey, WA 98503.

Excluded: All other employees, professional employees, managerial employees, confidential employees, and guards and supervisors as defined in the Act.

There are approximately 21 employees in the petitioned-for voting groups.

The non-professional employees (Voting Group B) will be polled to determine whether they wish to be represented by the Petitioner. The professional employees (Voting Group A) will be asked the following two questions on their ballot:

1. Do you wish to be included with non-professional employees in a single unit for the purposes of collective bargaining? The choices on the ballot will be "Yes" or "No."
2. Do you wish to be represented for the purposes of collective bargaining by United Food and Commercial Workers, Local 21, affiliated with United Food and Commercial Workers International Union, AFL-CIO? The choices on the ballot will be "Yes" or "No"

If a majority of the professional employees (Voting Group A) vote "Yes" to the first question on the ballot, indicating their desire to be included in a unit with non-professional employees, they will be so included. Their votes on the second question then will be counted together with the votes of the non-professional employees (Voting Group B) to determine whether the employees in the overall unit wish to be represented by the Petitioner. If, on the other hand, a majority of the professional employees vote against inclusion, they will not be included with the non-professional employees. Their votes on the second question will be separately counted to determine whether they wish to be represented by the Petitioner in a separate unit.

Thus, the unit determination is based, in part, upon the results of the election among the professional employees. However, I make the following findings in regard to the appropriate unit:

If a majority of the professional employees vote for inclusion in a unit with nonprofessional employees, I find the following single unit will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time, and per diem registered nurses, dosimetrists, radiation therapists, licensed practical nurses, radiation therapy assistants, and patient care coordinators in the Radiant Care Department employed by the Employer at the following locations: 2015 Cooks Hill Road, Suite 100, Centralia, WA 98531; 1200 Basich Blvd., Aberdeen, WA 98520; and 4525 3rd Ave. SE, Lacey, WA 98503; excluding all other employees, managerial employees, confidential employees, and guards and supervisors as defined in the Act.

If a majority of the professional employees do not vote for inclusion in a unit with nonprofessional employees, I find the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

UNIT A (PROFESSIONAL UNIT):

All full-time, regular part-time, and per diem registered nurses, dosimetrists, and radiation therapists in the Radiant Care Department employed by the Employer at the following locations: 2015 Cooks Hill Road, Suite 100, Centralia, WA 98531; 1200 Basich Blvd., Aberdeen, WA 98520; and 4525 3rd Ave. SE, Lacey, WA 98503; excluding all other employees, non-professional employees, managerial employees, confidential employees, and guards and supervisors as defined in the Act.

UNIT B (NON-PROFESSIONAL UNIT):

All full-time, regular part-time, and per diem licensed practical nurses, radiation therapy assistants, and patient care coordinators in the Radiant Care Department employed by the Employer at the following locations: 2015 Cooks Hill Road, Suite 100, Centralia, WA 98531; 1200 Basich Blvd., Aberdeen, WA 98520; and 4525 3rd Ave. SE, Lacey, WA 98503; all other employees, professional employees, managerial employees, confidential employees, and guards and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting groups found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **United Food and Commercial Workers, Local 21, affiliated with United Food and Commercial Workers International Union, AFL-CIO.**

A. Election Details

I have determined that a mail ballot election will be held. The Petitioner has waived all of the 10 days it is entitled to have the voter list described below.

The mail ballots will be mailed to employees employed in the appropriate voting groups by a designated official from the National Labor Relations Board, Region 19 or Sub Region 36, on Wednesday, March 10, 2021. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 19 office by 3:00 p.m. on Wednesday, April 7, 2021. The mail ballots will be counted by a designated Board Agent of the National Labor Relations Board at 1:00 p.m. on Friday, April 9, 2021 with participants being present via electronic means. The parties agreed in the stipulated record that, in the event I ordered a mail ballot election, only those ballots that arrive in the Region 19 office prior to the due date, which is by 3:00 p.m. PT on Wednesday, April 7, 2021, will be counted and that no objections will be filed based upon any such untimely received ballots.

Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be void.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region 19 office by no later than 4:45 p.m. on Wednesday, March 17, 2021, in order to arrange for another mail ballot kit to be sent to that employee.

B. Voting Eligibility

Eligible to vote are those in the voting groups who were employed during the payroll period ending February 27, 2021, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Also eligible to vote are all employees in the voting groups who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. **The Employer must provide a separate election eligibility list for each voting group.**

To be timely filed and served, the list must be *received* by the regional director and the parties by **Wednesday, March 3, 2021**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the voting groups found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the voting groups found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election.

For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

V. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated this 1st day of March, 2021.

Ronald K. Hooks

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
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